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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/497,774	02/03/2000	Edith H. Stern	BC9-99-059	7893

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EXAMINER	
LAFORGIA, CHRISTIAN A	
ART UNIT	**PAPER NUMBER**
2131	

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/497,774	STERN ET AL.	
	Examiner	Art Unit	
	Christian La Forgia	2131	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 December 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-48* is/are pending in the application.

4a) Of the above claim(s) *15,16,20 and 42-46* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14,17-19,21-41,47 and 48* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. The amendment filed on 09 December 2004 has been noted and made of record.

2. Claims 1-48 have been presented for examination.

3. Claims 15, 16, 20, and 42-46 have been cancelled as per Applicant's request.

Response to Arguments

4. Applicant's arguments with respect to claims 1-147, 17-19, 21-41, 47, and 48 have been considered but are moot in view of the new ground(s) of rejection.

5. See further rejections that follow.

Claim Rejections

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1-4, 6-14, 17-19, 21-27, 29-33, 35-41, 47, and 48 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,377,996 to Lumelsky et al., hereinafter Lumelsky.

8. The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

9. As per claims 1, 25, 33, 41, 47, and 48, Lumelsky teaches a system for transmitting data in a data stream to grouped recipients, comprising:

a server, for receiving users' requests for transmission of user requested data in a data flow for reception by said users (column 3, lines 58-65);

the server for transmission of at least one data stream, and responsive to the users' requests for arranging the users in at least one group of recipients of a respective data stream of the at least one data stream, with each user being arranged in a respective group of the at least one group, and wherein each respective group for receiving said user requested data in said respective data stream corresponding to a point of transmission of said data flow (column 3, line 66 to column 4, line 39); and

the server, responsive to the arrangement of the users in said at least one group, for transmitting said user requested data in said respective data stream to each said respective group (column 5, lines 36-53);

wherein the server for realigning a respective user from a first respective group corresponding to receiving user requested data at a first location in the respective data stream to a second respective group corresponding to receiving user requested data at a second location in the data stream, the second location being selected by the server to change the location in the data stream the respective user is receiving user requested data to any location in the data stream other than the first location in the data stream (column 6, lines 7-18; column 9, line 60 to column 10, line 15).

10. Regarding claims 2 and 37, Lumelsky teaches wherein, the server realigns a respective user with said respective data stream to change the relative position of the respective user to the data being transmitted in said respective data stream, responsive to a signal from the respective user (column 6, lines 7-18; column 9, line 60 to column 10, line 15).

11. Regarding claims 3, 26, and 38, Lumelsky teaches wherein, the server arranges the users into the groups arranged by the size of the group (column 14, lines 36-65).

12. Regarding claims 4, 27, and 39, Lumelsky teaches wherein, the server arranges the users into the groups arranged by a time interval for assembling the group (column 14, lines 36-65).

13. Regarding claims 6, 7, 29, 30, 35, and 36, Lumelsky teaches wherein, the telecommunications medium is the Internet and the user's requests are received from a World Wide Web browser (column 1, lines 16-27).

14. Regarding claims 8 and 40, Lumelsky teaches wherein, the data is transmitted with identifiable locations in the data stream; the server identifying a respective identifiable location in the data steam corresponding to the request; and the server, moving the respective user to another of the groups receiving the data stream from another location in the data stream related to the respective identifiable location (Figures 6, 7, 8, column 8, lines 4-59, column 9, line 59 to column 10, line 21).

15. With regards to claims 9, 10, and 18, Lumelsky teaches wherein, the related location is advanced/delay in time of transmission of the data stream relative to the respective identifiable location (column 8, lines 29-64).

16. With regards to claims 11-14, Lumelsky discloses wherein, the server has a plurality of ports and with each the group connected to a respective port for receiving the data stream from separate respective locations in the data stream through a respective port; and the server, moving the user to a the separate respective location in the data stream by reconnecting the user to another of the respective ports (column 7, lines 1-57).

17. Regarding claim 17, Lumelsky teaches means for signaling connected to the users for sending discrete respective signals to the server; the server, responsive to the discrete respective signals, realigning a respective user with the data stream to change the relative position of the respective user to the data being transmitted in the data stream; and wherein, the realignment is in discrete steps relative to position of the respective user to the data being transmitted in the data stream (Figures 6, 7, 8, column 8, lines 4-59, column 9, line 59 to column 10, line 21).

18. Regarding claim 19, Lumelsky teaches wherein, the discrete respective signals include signals for realignment in discrete intervals (Figures 6, 7, 8, column 8, lines 4-59, column 9, line 59 to column 10, line 21).

19. Regarding claim 21, Lumelsky teaches wherein the discrete intervals are intervals of space displacement in the location of the data in the data stream (Figures 6, 7, 8, column 8, lines 4-59, column 9, line 59 to column 10, line 21).

20. Concerning claim 22, Lumelsky teaches wherein, the server includes means for disconnecting a respective user with said respective data stream at an identifiable location in said respective data stream and for reconnecting the user to another data stream of the at least one data stream (column 9, line 59 to column 10, line 63, claim 1).

21. With regards to claim 23, Lumelsky teaches wherein, the server includes means for disconnecting the respective user with another data stream after a discrete interval and reconnecting the user with the data stream at the identifiable location (column 9, line 59 to column 10, line 63, column 14, lines 36-65, claim 1).

22. Concerning claim 24, Lumelsky teaches wherein, the server means for reconnecting the user with the data stream is a pointer for accessing data in the data store at discrete locations (Figures 6, 7, 8, column 8, lines 4-59, column 9, line 59 to column 10, line 21).

23. With regards to claim 31, Lumelsky teaches wherein the server includes means for shifting the respective individual requesters between the groups to change the time of reception of said user requested data relative to the data stream transmission (column 8, lines 29-64).

24. With regards to claim 32, Lumelsky teaches wherein, said user requested data is accessed from a data store communicatively coupled to the server (Figure 2 [block 630]);
the server includes means for changing the location in the data store accessed for shifting the location of the user requested data relative to the data flow transmission (column 8, lines 29-64).

25. Claims 5, 28, and 34 are rejected under 35 U.S.C. 103(a) as being obvious over Lumelsky.

26. The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

27. Regarding claims 5, 28, and 34, Lumelsky does not teach wherein, the server is limited to a maximum number of the groups; and wherein said server arranges the groups in relation to the maximum number.

28. It would have been obvious to one of ordinary skill in the art at the time the invention was made to limit the server to a maximum number of groups, since Lumelsky suggests at column 14, lines 36-65 optimizing data transfer rates by reducing network congestion and packet

losses which would occur by limiting the number of groups. It would have been obvious to one of ordinary skill in the art at the time the invention was made to arrange the groups in relation to maximum number, since it would be aesthetically pleasing to view the groups from a highest to lowest or lowest to highest fashion. See MPEP 2144.04; see *In re Seid,* 161 F.2d 229, 231, 73 USPQ 431, 433 (CCPA 1947).

Conclusion

29. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

30. The following patents are cited to further show the state of the art with respect to switching streaming data, such as:

United States Patent No. 6,195,680 to Goldszmidt et al., which is cited to show client based dynamic switching of streaming servers for fault-tolerance and load balancing.

31. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

32. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

33. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian La Forgia whose telephone number is (571) 272-3792. The examiner can normally be reached on Monday thru Thursday 7-5.

34. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on (571) 272-3795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

35. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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